**Terms and Conditions**

Unless otherwise expressly agreed in writing by Geminii, the following Terms and Conditions shall apply to any GEMINII SOFTWARE LIMITED (GEMINII) Quotation/Order/invoice and to any customer purchase order pursuant thereto ("the Contract"). Support and Maintenance services where quoted are mandatory unless otherwise stated. All Support times are based on UK local time.

1. **Definitions**

   **"Agreement"** means this document and/or any service or solution described on the Contract or as otherwise agreed in writing between the parties.

   **"Charges"** means the amounts due to GEMINII under this Agreement or a subsequent agreement. GEMINII reserves the right to increase the Charges at the end of the Term or a Subsequent Term. Such increase will be no more than CPI unless the functionality of the System has been materially enhanced.

   "**Core Service Hours**" are 09:00 to 17:00 GMT/BST Monday through Friday, excluding public holidays.

   "**Client"** means the person or company named as customer in the address line or body of the Contract.

   **"Authorised User"** means any employee, officer, or consultant/contractor of Client who has been given the authority by Client to access and use the Service.

   **"Authorised User Id"** means a unique user identifier and user account used to access the Service by an Authorised User. The Authorised User Id may only be used by the person to whom it has been specifically assigned and may not be shared with another Named User.

   **"Geminii"** means Geminii Software Limited, Registered in England No: 11085282. Registered Office: 453 Carr Place, Walton Summit Centre, Preston, England, PR5 8AU.

   **"Service"** means the provision of the functionality as described in the Contract.

   **"Software"** means any software used by GEMINII to facilitate provision of the Service, together with all modifications, enhancements, derivative works or improvements thereto, any and all methods, algorithms discoveries, inventions, materials, ideas and other work product that is conceived, originated or prepared in connection with the provision of the Service.

   **"Term"** means a minimum period of 1 (one year) from the date of signing of the Agreement. At the end of the term the Agreement will renew for subsequent periods of one year ("Subsequent Term") unless notice is given by either party to terminate the agreement. Any notice given to Geminii must be no less than 90 days before the expiry date in order to terminate on an anniversary of any Agreement Date.

   **"Usage"** means the number of users of the Software and/or Service and the method Geminii uses to measure users of the Software and/or Service is as follows: Usage is calculated as) the total number of unique users issued by the Client during the entire duration of the service provision. The Client must purchase sufficient licences or Service user subscriptions to remain compliant. Clients who exceed users are required to purchase additional users within 14 days of being advised of excess use by Geminii. For the avoidance of doubt, the Client cannot reduce usage to avoid being compliant or paying for correct usage. Any over-use in the previous 12-month period must be paid for.

2. **Licence to use the Service**. GEMINII hereby grants to Client a non-exclusive, non-transferable, non-sublicensable licence from the Agreement Date for the period during which Client subscribes to access and use the Service.

3. **GEMINII's obligations**.

   **3.1** GEMINII will, for the Term of this agreement,
   (i) make the Service available to Client in accordance with this Agreement and specifically in accordance with clause 3.2
   (ii) take all reasonable steps to protect Client's confidential information.

   **3.2 Service Availability**

a. "Target Availability" means commercially reasonable efforts by GEMINII to achieve Service Availability of at least 99.9%, as measured in periods of time not shorter than one calendar month.

b. "Scheduled Downtime" means any downtime previously agreed with the Client including, but not limited to, time to perform any upgrades to the Service, hardware or Software and time to perform agreed scheduled backups. GEMINII will give the Client the following minimum notice of any downtime and will use reasonable efforts to accommodate the Client's reasonable requests as to the timing of any such downtime.

| | |
|---|---|
| For periods less than 1 hour | 24 hours |
| For periods less than 4 hours | 1 week |
| For periods greater than 4 hours | 2 weeks |

c. Service Availability Calculation

"Service Availability" is calculated according to the following formula:

$$\text{Service Availability} = \frac{(PSH - AD)}{PSH} \times 100\%$$

Where:

Planned Service Hours ("PSH") = 24 hours per day, 7 days per week, 52 weeks per year.

Service Downtime ("AD") = the total time when the Service is not available to the Client not including Scheduled Downtime.

However, GEMINII does not guarantee that access to the Service via the Network or Internet will be uninterrupted or error free and GEMINII's only responsibility with regard to providing access to the Service using any Network or the Internet is to provide connectivity from GEMINII's data centre, with Client bearing all responsibility to provide Client's own connection(s) to the Network or Internet and bearing all risk of data corruption and interception beyond GEMINII's data centre, including any corruption or interception that occurs in transmission over the Network or the Internet

4. **Client's Obligations**. The following specific obligations are in addition to the other obligations contained in this Agreement. Client will (1) allow GEMINII to modify the features, components and functionality of the Service from time to time provided that GEMINII provides Client with reasonable advance notice of any modification. (2) use the Service strictly in accordance with this Agreement. (3) safeguard the Authorised User Id(s) allocated to Client and allow only a single person who is an authorised employee, consultant or contractor of Client to use each Authorised User Id. (4) indemnify, defend, and hold harmless GEMINII in respect of all costs (including legal fees), claims, expenses, liabilities or damages incurred by GEMINII (including, without limitation, claims asserted by the Client) arising out of any use by Client of the Service or the Software in breach of this Agreement.

5. **Payment**.
    5.1 Client will pay to GEMINII the Charges as detailed in the Contract of for any over Usage.

    5.2 All Charges shall be non-refundable, shall not be available to any right of setoff and do not include any taxes, duties, tariffs or other governmental charges or expenses imposed in connection with this Agreement and/or the provision of the Service hereunder.

    5.3 Charges will still apply in the event of any delay to the commencement of the project if Client does not meet its obligations or provide information/assistance reasonably expected by GEMINII in order to deliver the service.

    5.4 GEMINII reserves the right to charge interest on undisputed late payments at the rate of 1.5% p.a. over Barclays Bank Plc's base rate from time to time which shall accrue from day to day on the amount of the delayed payment for the period of the delay in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

    5.5 If Client fails to comply with any of the terms of payment for more than 14 days after receipt of a written demand for payment, then GEMINII reserves the right to (i) treat such non-payment as a breach of the terms of this Agreement on the part of Client and terminate this Agreement under **clause 8.1(i)** without the need to allow a 30 day period to remedy the default; or (ii) suspend performance of this Agreement (including provision of the Service)

without incurring any liability to Client, and Client shall remain liable to GEMINII in accordance with Clause 9. Where GEMINII elects to suspend provision of the Service, GEMINII shall resume provision upon payment in full of all amounts due to GEMINII (including interest if any).

5.6 If appropriate the customer must use professional and set-up services within 3 months of date of order, otherwise these will expire. If the customer requires professional and set-up services after expiry, they must be re-purchased.

5.7 Unless otherwise expressly between the parties, GEMINII shall be entitled to increase any and all annual fees payable by the Client (to take effect on the first day of the next Annual Period) by an amount not exceeding the RPI in effect on the date of the renewal. Should Geminii not have increased annual fees in the preceding annual period, Geminii may, in addition, increase any and all annual fees by an additional amount no greater than the average of RPI for that preceding period.

5.8 The Client acknowledges and agrees that upon execution of this Agreement, the Client is committed to the full Term of the Agreement as defined herein. The Client further agrees that this Agreement is non-cancellable during the Term, and the Client is obligated to fulfil all payment and other obligations as set forth in this Agreement.

5.9 In the event that the Client seeks to cancel this Agreement prior to the completion of the Term, for any reason other than as expressly permitted under this Agreement, the Client shall be liable to pay Geminii the full contract fee for the entire Term, as if the Agreement had been fully performed. This cancellation fee is due and payable immediately upon the Client's notice of intention to cancel, and reflects the agreed upon damages for the loss of the bargain and not as a penalty. The parties agree that this fee is a reasonable pre-estimate of the damages Geminii would incur in the event of early termination by the Client. The obligations of the Client under this "Non-Cancellation and Cancellation Fee Clause" shall survive any termination or expiration of this Agreement.

6. **Intellectual Property in the Software and the Service**.  The Software and all copyright, trademarks and other intellectual property rights that exist within it, together with all intellectual property rights employed in providing the Service, are and shall remain the exclusive property of GEMINII.  Nothing in this Agreement shall pass to Client any rights of title or ownership in such property.

7. **Warranty**.  GEMINII represents and warrants that:

   it will use all reasonable skill and care in the course of performing its obligations under this Agreement;

   it has the right to enter into this Agreement and is authorised to provide and/or sell the Services as contemplated by this Agreement;

   it has the right to grant to Client a licence to use any Software, which relates to this Agreement;

   any Software will be free from material defects, in good operating condition, will perform without material errors and will conform in all respects to the relevant specification as provided from time to time.

   any Software will be free from, and any Services will not introduce, produce or otherwise allow, any destructive elements;

   In the event of any breach of any of the representations and warranties set out in clause 7, in addition to (and not in lieu of) any other remedies available to Client under this Agreement or otherwise, GEMINII agrees promptly to take whatever action is necessary to remedy such breach including modifying or replacing the non-compliant Software at no additional cost or expense to Client.

   Except for the express warranties that are given in this Agreement, (I) GEMINII makes no representation or warranty with regard to any product or service Geminii provides under the agreement,

   (II) GEMINII provides all products and services under the agreement with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with client, and

   (III)  GEMINII makes no warranty against interference with client's enjoyment of any product or service provided under the agreement, against infringement, or of fitness for any particular purpose or of merchantability.

   Without limiting the generality of the foregoing, GEMINII disclaims any warranty that:

   (a)  The service will be entirely error free or will operate uninterrupted; and

   (b)  The service will operate in conjunction with customers' hardware and software environment other than in any manner stipulated and recommended by GEMINII.

8. **Additional Termination**

**8.1** Either party may terminate this Agreement by written notice to the other party:

**(i)** forthwith if the other party commits any breach of this Agreement and, in the case of a breach capable of being remedied, such breach is not remedied within 30 days of a written request to do so; or

**(ii)** forthwith if the other party (i) has a receiver or administrative receiver appointed over its assets; (ii) passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); (iii) a court of competent jurisdiction makes an order to that effect; (iv) becomes subject to an administration order; (v) enters into any voluntary arrangement with its creditors; or (vi) ceases or threatens to cease to carry on business;

**8.2** Termination will not affect any accrued rights or liabilities of either party or the continuance in force of any provision that is expressly or by implication intended to come into or continue in force on or after termination.

9. **Liability**. Client shall be solely responsible for the conduct of any persons, whether authorised or not, who access the Service using a correct Named User Id. GEMINII's liability to Client for claims for direct physical damage to Client's tangible property caused by negligence and/or breach of contract is limited to £1,000 for each event or series of linked events. GEMINII shall not be liable to Client for any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, indirect loss or consequential loss whatsoever and howsoever caused (even if caused by GEMINII's negligence or breach of contract and even if GEMINII was advised that such loss would probably result). In any case, GEMINII's aggregate liability to Client for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by GEMINII's negligence or breach of contract) shall for each event or series of connected events be limited to the value of payments made under this contract. Nothing in this Agreement shall exclude or restrict either Party's liability for death or personal injury resulting from the acts of gross negligence or for fraud or fraudulent misrepresentation.

10. **Force Majeure.** Neither party will be liable for any delay in performing its obligations under this Agreement if the delay is caused by circumstances beyond its reasonable control (including, without limitation, deficient performance or availability of the Internet. and the performance of the parties' obligations shall be suspended during the period that the circumstances persist.

11. **Data Protection**. Unless the parties execute a separate agreement for compliance with GDPR. GEMINII's standard Data Processing Agreement (https://Geminii.uk/data-processing/) will apply at all times. The Client will comply with the ata Protection Regulation (UK GDPR) and the Data Protection Act 2018 ("the Act") and any future legislation enacted in replacement of the Act. GEMINII, acting as Data Processor (as defined in the Act), will comply with the Act and, in particular, the 7th principle of the Act and any future legislation enacted in replacement of the Act. Any feedback Client provides GEMINII regarding the operation of Service other than that required by the terms of this Agreement to be provided is voluntary and may be used by GEMINII for any purpose (including, without limitation, to amend, vary, modify, supplement or improve the Service) without payment of compensation to Client, Client's employees, agents or other third party. GEMINII may collect, maintain and use statistical data regarding Client's use of the Service. GEMINII agrees that it will not identify Client as the source of any data collected under this Agreement without Client's prior approval. Notwithstanding anything in this Agreement to the contrary, GEMINII may, identify to third parties, whether in advertising or otherwise, Client as a customer of GEMINII and as a user of the Service. In all other circumstances GEMINII will obtain Client's prior written approval before GEMINII may use Client's trademarks and service marks in such identification, provided that no use by GEMINII creates a likelihood of confusion as to the ownership of any mark or the goods or services with which it is identified.

12. **Publicity**. The Client agrees for GEMINII to use Client's name and logo on its published customer List. In addition, the Customer agrees that GEMINII may issue periodic newsletter and blog style releases relating to their use of the Service.

13. **Invalidity and Severability.** If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability shall not affect the other provisions, and all provisions not affected shall remain in full force and effect. Both parties will attempt to substitute with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

14. **Governing Law and Jurisdiction.** This Agreement will be governed and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

15. **Entire Agreement.** This Agreement and the documents executed under them supersede all prior agreements, arrangements, and understandings between the parties, and constitute the entire agreement between the parties relating to, the subject matter hereof.

**Service Hours, Response and Resolution Times**

The Client may report failures of the Service and failures of connectivity to the Service during Core Service Hours, each such failure being an "Incident".

Where 24 x 7 support is indicated in the Contract Client may report failures of the Service and failures of connectivity to the Service at any time, each such failure being an "Incident".

GEMINII will monitor progress of Incidents and will use commercially reasonable efforts to meet the following response and resolution times.

**Response Time means:**
Start Time:        When the Incident details have been reported to GEMINII.
End Time:         When the Incident number and the severity have been provided back to the reporting person

**Resolution Time means:**
From the End Time above to the time the issue raised in the Incident has been fixed and the resolution has been provided to Client for acceptance testing; or a workaround has been provided and the service is available to Client. For the avoidance of doubt, if an Incident is passed back to Client for further information, the time GEMINII is awaiting a response will not count towards the resolution time.

| Severity | Definition | Response Time | Target Resolution Time |
|---|---|---|---|
| **1 (24 x 7)** | **Urgency is High and impact is High**<br>The Service is not available. | 1 hour | 4 hours |
| **1 (Core)** | **Urgency is High and impact is High**<br>The Service is not available. | 1 hour (Core Service Hours) | 4 Hours (Core Service Hours) |
| **2** | **Urgency is High and impact is Medium OR Urgency is Medium and impact is High**<br>Service is available but a problem exists that has an adverse effect on the ability for user(s) to use the Service. | 1 Hour (Core Service Hours) | 6 Hours (Core Service Hours) |
| **3** | **Urgency is Medium and impact is Medium**<br>Service is available but a problem exists that has an adverse effect on the ability for user(s) to use the Service. | 4 Hours (Core Service Hours) | 5 days (Core Service Hours) |
| **4** | **Urgency is Low and Impact is Low**<br>Service is available but a problem exists that does not have an adverse effect on the ability of user(s) to use the Services. | 8 Hours (Core Service Hours) | Next release |

### 1.1. Reporting Incidents

In order to receive the response and resolution times provided in this Appendix, Client must report Incidents to GEMINII using the following methods;

Severity 1 – Initially by telephone only and then by email
Severity 2 – By either telephone; e-mail
Severity 3 – By either telephone; e-mail

Email address to be used by Client for reporting incidents is support@geminii.uk

Unless you have been advised of an alternative number, the telephone number to be used for reporting incidents is 0300 373 2449